

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND
CRIMINAL JUSTICE ACT PLAN

I. AUTHORITY.

Pursuant to the Criminal Justice Act of 1964, as amended, (codified at section 3006A of title 18, United States Code and hereinafter referred to as "the Act" or "the CJA"), section 3005 of title 18, United States Code, and the Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures (hereafter CJA Guidelines), the Judges of the United States District Court for the District of Maryland adopt this Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation.

II. STATEMENT OF POLICY.

A. Objectives.

1. The objective of this Plan is to attain the ideal of equality before the law for all criminally accused persons. Therefore, this Plan shall be administered so that those accused of crime, or otherwise eligible for services pursuant to the Act, will not be deprived because they are financially unable to pay for adequate representation of any element of representation necessary to an adequate defense.
2. The further objective of this Plan is to guide the implementation of the Act, the Anti-Drug Abuse Act of 1988 (codified in part at section 848(q) of title 21, United States Code), and the CJA Guidelines in a way that meets the needs of this district.

B. Compliance.

1. The Court and its constituent agencies, the Office of the Federal Public Defender, private attorneys appointed under the Act, and the United States and its attorneys shall comply with the CJA Guidelines approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with this Plan.
2. The Clerk of the Court shall at all times keep posted on the Court's official web site a current copy of this Plan. The Clerk shall maintain a current copy of the "CJA Guidelines" for the use of the members of the Panel of Private Attorneys under the Criminal Justice Act (CJA Panel).

III. DEFINITIONS.

- A. "Representation" includes counsel and investigative, expert, and other services.

B. "Appointed Attorney" includes private attorneys appointed under the Act as well as the Federal Public Defender and his/her assistants or staff attorneys.

C. "Judge" includes any United States District Judge or any United States Magistrate Judge.

IV. PROVISION OF REPRESENTATION.

A. Circumstance.

1. Mandatory. Representation shall be provided for any financially eligible person who:

- a. is charged with a felony or with a class A misdemeanor;
- b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in section 5031 of title 18, United States Code;
- c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
- d. is under arrest, when such representation is required by law;
- e. is entitled to appointment of counsel in parole proceedings;
- f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
- g. is subject to a mental condition hearing under chapter 313 of title 18, United States Code;
- h. is in custody as a material witness;
- i. is seeking to set aside or vacate a death sentence under sections 2254 or 2255 of title 28, United States Code;
- j. is entitled to appointment of counsel in verification of consent proceedings pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under section 4109 of title 18, United States Code;
- k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
- l. faces loss of liberty in a case, and federal law requires the appointment of counsel.

2. Discretionary. Whenever a judge determines that the interests of justice so require, representation may be provided for any financially eligible person who:

- a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
- b. is seeking relief, other than to set aside or vacate a death sentence, under sections 2241, 2254, and/or 2255 of title 28, United States Code;

- c. is charged with civil or criminal contempt and faces loss of liberty;
- d. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission, which has the power to compel testimony, and
- e. there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, and face loss of liberty;
- f. is proposed by the United States Attorney for processing under a pretrial diversion program;
- g. is held for international extradition under chapter 209 of title 18, United States Code.
- h. has standing to contest the forfeiture of property in a judicial civil forfeiture proceeding and is represented by counsel appointed under the CJA; and/or
- i. is identified by the United States Attorney as the target of or a material witness in a proceeding that reasonably could result in the person's loss of liberty.

3. Ancillary Matters. Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings pursuant to subsection (c) of section 3006A of title 18.

B. When Counsel Shall Be Provided.

Counsel shall be provided to eligible persons as soon as feasible: (1) after they are taken into custody, (2) when they appear before a judge, (3) when they are formally charged or notified of charges if formal charges are sealed, (4) when they are notified by the United States Attorney or a federal law enforcement agency that they are the target of a proceeding that reasonably could result in their loss of liberty, or (5) when a judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest.

C. Number and Qualifications of Counsel.

1. Number. The CJA Panel is segregated by function into three distinct panels: Felony, Capital, and Misdemeanor (see PLAN FOR THE COMPOSITION, ADMINISTRATION, AND MANAGEMENT OF THE PANEL OF PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT, also referred to as the "Appendix"). Upon order of the Court an attorney from the appropriate panel shall be appointed. In an unusually complex case, upon motion of counsel a second attorney may be appointed by the Court. In any case where a defendant by statute may be eligible for imposition of the death penalty, the defendant shall be provided two attorneys under 18 U.S.C. § 3005 as required by *United States v. Boone*, 245 F.3d 352, 358-59 (4th Cir. 2001).
2. Qualifications. In general, qualifications to serve as appointed counsel under the CJA will be determined by the Court and its standing Criminal Justice Act

Committee. In any case where the defendant may be eligible for imposition of the federal death penalty, the Court is required under 18 U.S.C. § 3005 to consider the recommendation of the Federal Public Defender when appointing counsel. The Federal Public Defender shall make his/her recommendation by nominating the membership of the Capital Panel through appropriate consultation with the CJA Supervising Attorney. Except in extraordinary circumstances, at least one of the attorneys appointed to represent a death-eligible defendant shall be a member of the Capital Panel. Members of the Capital Panel should meet the qualifications set out in 21 U.S.C. § 848(q)(5). In any case arising under 28 U.S.C. § 2254 or § 2255 in which the inmate is under a sentence of death, at least one attorney appointed should meet the qualification requirements set forth in 21 U.S.C. § 848(q)(6). In any case, pursuant to section 848(q)(7), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under sections 848(q)(5) and (6), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.

3. Substitution of Counsel. A judge may, in the interest of justice, substitute one appointed counsel for another at any stage of the proceedings in this Court.

D. Determination of Need for Counsel.

1. Appearance in Court. In every case in which a person entitled to representation pursuant to this Plan appears without counsel, the judge shall advise the party of the right to be represented by counsel throughout the case, and that counsel will be appointed on his/her behalf if the party so desires and is financially unable to obtain counsel.
2. Fact Finding. The determination of eligibility for representation under the Act is a judicial function to be performed by a judge after making appropriate inquiries concerning the person's financial condition. All statements made by a defendant in such financial inquiry shall be either (a) by affidavit sworn to before a judge or the Court Clerk or his/her deputy, (b) by certification under penalty of perjury, or (c) under oath in open court before a judge.
3. Change in Circumstances. If at any stage of the proceedings the judge finds that the defendant is financially unable to pay his/her retained counsel and is unable to obtain other counsel, the judge may appoint counsel in accordance with the general procedure set forth in this Plan. The judge will not appoint the attorney previously retained unless an inquiry has been made into the fee agreement and prior payments to the attorney and the judge finds that the interests of justice necessitate the appointment of the previously retained attorney.
4. Disclosure of Change in Eligibility. If, at any time after appointment, counsel obtains nonprivileged information that a client is financially able to make payment,

in whole or in substantial part, for legal or other services in connection with his/her representation, counsel shall advise the Court.

5. Questions Regarding Financial Eligibility. Under CJA Guideline 2.04, all questions regarding financial eligibility shall be resolved in favor of furnishing representation to the accused. Erroneous determinations may be corrected at a later date through an order requiring the defendant to reimburse the United States Treasury for part or all of such costs.
6. Challenges to Financial Eligibility. In any circumstance where a defendant's financial eligibility under the Act is challenged, the determination of the defendant's right to have appointed counsel shall be made by a judge of this Court.

V. FEDERAL PUBLIC DEFENDER ORGANIZATION.

- A. The Federal Public Defender's Office for the District of Maryland, previously established in this district pursuant to the provisions of the CJA, is hereby recognized as the Federal Public Defender Organization for this District.
- B. The Federal Public Defender shall provide legal services consistent with the CJA throughout the district and shall maintain offices in each division of the district.
- C. The Court in its discretion will determine whether any party entitled to representation will be represented by the Federal Public Defender or by another appointed attorney. Ordinarily, in multiple defendant cases, the Federal Public Defender shall be appointed to represent the allegedly most culpable defendant requiring the appointment of counsel.
- D. The Federal Public Defender shall be responsible for the supervision and management of the Federal Public Defender's Office. Accordingly, the Federal Public Defender shall be appointed in all cases assigned to that office. Subsequent assignment to assistants and staff attorneys will be made at the discretion of the Federal Public Defender.
- E. Neither the Federal Public Defender nor any assistant or staff attorney may engage in the private practice of law except as permitted by the Code of Conduct for Federal Public Defenders. The Federal Public Defender shall submit to the Director of the Administrative Office of the United States Courts at the time and in the form prescribed by the Director reports of the activities, the financial position, and the proposed budget of the organization. Copies of such reports shall be furnished to this Court and to the Judicial Council of the Fourth Circuit.
- F. The Federal Public Defender shall furnish to the Court the roster of the personnel of his office and shall thereafter report any changes therein.

- G. The Federal Public Defender shall assist the Court in managing the CJA Panel by serving as a member of the Court's standing Criminal Justice Act Committee and, subject to that Committee's oversight, shall coordinate the training of CJA Panel members.

VI. PRIVATE ATTORNEYS.

- A. Establishment of CJA Panel(s). Pursuant to an earlier version of this Plan and procedures adopted by the Court, panels of private attorneys designated to represent persons in felony, capital, and misdemeanor cases, respectively, have been established and are now recognized under this Plan. Their members shall be appointed in appropriate circumstances to represent persons under the CJA.
- B. Organization. The PLAN FOR THE COMPOSITION, ADMINISTRATION, AND MANAGEMENT OF THE PANEL OF PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT is found in the Appendix to this CJA Plan.
- C. Appointment of Panel Attorneys. In circumstances where it is necessary and appropriate to appoint a panel attorney in an individual case, selection of the panel attorney to be appointed should be made on a rotational basis, subject to the Court's authority to appoint any licensed attorney as the interests of justice may require. The defendant does not have the right to select appointed counsel from the panel of attorneys or otherwise.
- D. Ratio of Appointments. Where practical and cost effective, private attorneys from the CJA Panel shall be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the Act. "Substantial" shall usually be defined as approximately 25% of the appointments under the Act annually throughout the district. For the sole purpose of allocation of cases between panel attorneys and the Federal Public Defender, a "case" shall be deemed to be (1) each person for whom a separate appointment of counsel has been made by the Court pursuant to the Act, and (2) each new trial following motion, mistrial, reversal, or remand on appeal. While this ratio may be monitored by the Court, the presumption is that the Federal Public Defender shall in each case be appointed to represent the allegedly most culpable defendant requiring appointed counsel.
- E. CJA Supervising Attorney. To assist the court in the discharge of its responsibilities under the Act, and to administer the CJA panels, the Court may appoint a CJA Supervising Attorney. The CJA Supervising Attorney shall be employed by and report to the Court and shall not be an employee of the Federal Public Defender. The CJA Supervising Attorney shall perform those functions assigned to her/him in this Plan and the Appendix hereto, as well as other duties relating to administration of the Act.

VII. APPOINTMENTS IN CONNECTION WITH REQUESTS FOR RELIEF UNDER 28 U.S.C. §§ 2241, 2254, OR 2255.

- A. Appointment of Counsel. Any person seeking relief under 28 U.S.C. §§ 2241, 2254 or 2255 may apply to the Court to be furnished representation based on a showing (1) that the interests of justice so require and (2) that such person is financially eligible for appointment of counsel.
- B. Form of Application. Applications for appointment of counsel under 28 U.S.C. §§ 2241, 2254 and 2255 shall be verified and in such written form as is prescribed by the Judicial Conference of the United States. If the party applicant is not before the Court, the Court may, without requiring the personal appearance of the party for such purpose, act on the basis of the form alone or the form as supplemented by such information as may be made available by an officer or custodian or other responsible person, provided that such information is also made available to the party.
- C. Approval of Application for Appointed Counsel. The Court may approve such representation upon a determination that the interests of justice so require and that such person is financially eligible for appointment of counsel. The order for appointment of counsel shall be referred to the CJA Supervising Attorney for assignment of qualified counsel, who may or may not be a member of a CJA panel.

VIII. APPOINTMENTS IN CONNECTION WITH CAPITAL HABEAS CASES UNDER 28 U.S.C. §§ 2254 OR 2255.

- A. Appointment of Counsel. Upon proper application, counsel shall be appointed to represent financially eligible persons seeking habeas corpus relief in death penalty proceedings under 28 U.S.C. § 2254. The CJA Supervising Attorney shall consult with the Federal Public Defender before recommending appointments under this section to the Court.
- B. Number and Qualifications of Counsel. Pursuant to 21 U.S.C. § 848 (q)(4)(B), upon defendant's request, one or more attorneys meeting the qualifications for appointment set out in 21 U.S.C. § 848(q)(6) shall be appointed to represent the person seeking habeas corpus relief following a judicial determination that appointment is appropriate. Pursuant to section 848(q)(7), the Court may, upon good cause, appoint an attorney who may not qualify under section 848(q)(6) but who otherwise has the background, knowledge, and experience necessary to represent the defendant properly in a capital habeas case, giving due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.
- C. Case Budgeting. In each capital habeas case in which counsel is appointed under the Act, a case budget will be required. The budget process shall be confidential, and representatives of the Executive Branch of the United States government shall not participate. Final expenditures under the Act in capital habeas cases shall be made public, as required by law. The budgeting process shall be managed by the CJA Supervising Attorney. The final budget shall be approved by the Chief Judge or his/her designee. Funding disputes will be resolved by the Chief Judge or his/her designee,

whose decision shall be final. Interim payment orders will not be approved by the Court until a budget agreement is reached, except in extraordinary circumstances.

- D. Compensation of Counsel. The court will order compensation of counsel appointed under 21 U.S.C. § 848(q) at such rates or amounts as the Court determines to be reasonable, with due regard to the complexity of such cases and the skill required to provide effective representation, and subject to the limits established by law.
- E. Attorney's Fees in Excess of \$100,000; Other Service/Expert Fees in Excess of \$7,500. Whenever attorney's fees in excess of \$100,000.00, or expert or other service provider fees and expenses in excess of \$7,500, are approved by this Court as an element of a budget in a capital habeas case, such elements of the budget shall be referred to the Chief Judge of the Circuit, or his/her designee, for review, pursuant to 21 U.S.C. § 848(q)(10)(B) and Judicial Conference policy.

IX. APPOINTMENTS IN CONNECTION WITH CAPITAL PROSECUTIONS.

- A. Notification of Eligibility for Capital Punishment. In order to conserve scarce resources, to facilitate good administration under the Act, and to insure the appointment of qualified counsel, the United States Attorney's Office shall, consistent with other lawful obligations, promptly notify the Court and its CJA Supervising Attorney that a death-eligible offense is charged or is to be charged.
- B. Appointment of Counsel. In death-eligible cases the CJA Supervising Attorney shall propose an attorney for appointment after considering the recommendation of the Federal Public Defender. To assist the recommendation process, the Federal Public Defender shall maintain a list of lawyers qualified to serve in capital cases under 21 U.S.C. § 848(q)(5). (The names on this list, once approved by the CJA Committee and the Court, constitute the Capital Panel.) Ordinarily, the Court will then appoint the proposed attorney to represent the defendant. At his/her initial appearance, the defendant shall be advised of his/her right to be represented by two appointed attorneys, at least one of whom shall be learned in the law applicable to capital cases under 18 U.S.C. § 3005. If the defendant requests the appointment of two attorneys, then two attorneys shall be appointed as required by *United States v. Boone*, 245 F.3d 352 (4th Cir. 2001).
- C. Case Budgeting. Appointed counsel in capital prosecutions shall, in consultation with the CJA Supervising Attorney, prepare and submit a budget detailing the costs reasonably expected to be incurred in the representation of the defendant, including attorney fees and expert and other costs. Some elements of the budget may require the approval of the Chief Judge of the U.S. Court of Appeals for the Fourth Circuit or his/her designee.

X. DUTIES OF APPOINTED COUNSEL.

- A. Standards. The services and quality of representation provided by appointed counsel to their CJA clients shall be equal to that provided their clients who retain them.
- B. Professional Conduct. Attorneys appointed pursuant to the CJA shall conform to the highest standards of professional conduct, including but not limited to the provisions of the Maryland Rules of Professional Conduct.
- C. No Receipt of Other Payment. Appointed counsel may not require, request or accept any payment or promise of payment or any other valuable consideration for representation of their client in the matter for which they have been appointed (or for other contemporaneous representation of their client in any other matter) unless such payment is approved by order of the Court or directive of the CJA Committee. Appointed counsel must make any such request to accept a fee in writing to the Court and to the CJA Committee. The Court and the Committee will grant approval only in extraordinary circumstances, since allowing court-appointed counsel to accept payment from a client or his/her family creates an appearance of impropriety that may undermine the integrity of the judicial process and suggests that appointed counsel would not provide effective representation if he/she were compensated only under the Criminal Justice Act.
- D. Vouchers. Vouchers shall be submitted no later than 45 days after the final disposition of the case, unless good cause is shown. The CJA Supervising Attorney shall insure that panel attorneys are complying with this time limit. Counsel shall make every effort to submit claims as soon as possible after the completion of the services rendered. The Court will process claims for payment promptly.
- E. Continuing Representation. In the event that a defendant is convicted following trial, counsel appointed under the Act shall advise the defendant of any right of appeal and of the right to counsel. If requested to do so by the defendant, counsel shall file a timely notice of appeal and shall continue to represent the defendant unless and until relieved by the Court of Appeals.
- F. Case Budgeting. In death-eligible cases counsel shall prepare and submit budgets as required above (see sections VIII.C. and IX.C. of this Plan, above). Upon the advice of the CJA Supervising Attorney, the Court in its discretion may require appointed counsel to prepare and submit budgets in non-capital cases, particularly when such cases involve multiple defendants or otherwise appear to be complex.

XI. CRIMINAL JUSTICE ACT COMMITTEE.

- A. Duties. The Criminal Justice Act (CJA) Committee shall: (1) insure that the Court is generally discharging its duties under the Act, and in so doing shall endeavor to insure that each indigent person entitled to representation under the Act in the District of Maryland is competently, zealously, and effectively represented; (2) insure that public funds expended under the authority of the Act in the District of Maryland are conserved, wisely allocated, and subject to proper accounting; (3) provide supervision and guidance

to the CJA Supervising attorney; and (4) recommend to the Court the names of those attorneys who should be admitted to panel membership (and those who should be disqualified) after review of the qualifications of applicants and current members and, with respect to the panel of attorneys recommended for appointment in capital cases, after review of the Federal Public Defender's recommendations.

- B. Membership. The CJA Committee shall consist of at least three District Judges, at least two Magistrate Judges, the Federal Public Defender, the CJA Supervising Attorney, and at least two panel representatives, at least one of whom has a principal office located in the Northern Division and at least one of whom has a principal office located in the Southern Division.
- C. Meetings. The CJA Committee shall meet regularly and adhere to an annual schedule as set forth in the Appendix.
- D. Agenda and Minutes. The CJA Supervising Attorney shall prepare, distribute, maintain, and archive the agendas and minutes of each meeting of the CJA Committee and its constituent subcommittees. The Committee's deliberations and minutes shall be confidential.

XII. FUNDING FOR EXPERT, INVESTIGATIVE OR OTHER SERVICES.

In consultation with the CJA Supervising Attorney, the Court shall insure that expert, investigative and other necessary services are available to financially eligible persons to the extent allowed under the Act.

XIII. MISCELLANEOUS.

- A. Forms. Standard forms, pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of the United States Courts or standard forms approved by the CJA Committee, shall be used, where applicable, in all proceedings under the Plan.
- B. Supersession. This Plan supersedes all prior Criminal Justice Act Plans of this Court.

XIV. EFFECTIVE DATE.

This Plan shall become effective when approved by the Judicial Council of the Fourth Circuit.

ENTERED FOR THE COURT ON THE 28th DAY OF APRIL, 2004.

_____/S/_____
BENSON EVERETT LEGG
CHIEF JUDGE, UNITED STATES DISTRICT COURT

APPROVED BY THE JUDICIAL COUNCIL OF THE FOURTH CIRCUIT ON THE 4TH DAY
OF MAY, 2004.

See, Order of Judicial Council of the Fourth Circuit